IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 35 OF 2005

The Goa State Co-operative Bank Ltd.
Having its Head office at Sahakar Sankhul,
Patto Plaza, Panaji, Goa. ..... Petitioner

V e r s u s

Shri Dulu K. Kerkar,
Prop. Prasad Krupa Transport,
Tambdi Ghat, Usgao-Goa. ..... Accused

Mr. S. R. Rivonkar, Advocate for the Appellants.
Ms. Pallavi K. Salgaonkar, Advocate for the Respondent.

CORAM: N. A. BRITTO, J.

DATE: 23rd March, 2007.

ORAL JUDGMENT

Heard Shri Rivonkar, the learned Counsel on behalf of the appellant/Complainant.

2. There is no dispute that the respondent/accused was granted a loan of Rs.3,00,000/- on 31.07.1996 and the subject cheque towards part payment of the said loan was issued by the accused on 25.03.2003. The learned Magistrate relying on ***Smt. Ashwini Satish Bhat v. Shrijeevan Divakar (1999 (2) ALL M.R. 664),*** has come to the conclusion that the said cheque was issued towards a time barred debt. Learned Counsel on behalf of

the Complainant submits that an Award was also passed for the recovery of the loan given to the respondent. If that is so, the Complainant's Manager ought to have stated so in his deposition/affidavit in evidence before the Court. The Complainant did not even produce a statement of account which might have otherwise shown in case any payments were made by the accused. The view held by this Court in ***Smt. Ashwini Satish Bhat v. Shrijeevan Divakar*** (supra), has been consistently followed by this Court in ***Narendra V. Kanekar v. The Bardez-Taluka Co-op Housing Mortgage Society Ltd. & anr.***, (unreported Judgment dated 20.04.2006 in CRIR no. 3/2006), and, this Court has stated thus,

> "8. The learned Division Bench of Kerala High Court has in terms not followed the said three decisions noted hereinabove, including the Judgment of this Court in the case of ***Ashwini Satish Bhat v. Shrijeevan Divakar Lolienkar*** (supra). As far as mere issue of cheque is concerned, issued after the expiry of period of limitation, then there is no dispute that this Court would be bound to follow the Judgment in the case of ***Ashwini Satish Bhat v. Shrijeevan Divakar Lolienkar*** (supra), being a Judgment of a co-ordinate bench and, to that extent, the ultimate finding in the case of ***Dr. K. K. Ramakrishnan v. Dr. K. K. Parthasaradhy*** (supra), with respect, does not appear to be correct and therefore need not be followed.

9. Mere giving a cheque, without anything more, will not revive a barred debt, because cheque has to be given, as contemplated by the explanation in discharge of a legally enforceable debt. There is no doubt that in terms of the Indian Limitation Act, 1963, a signed acknowledgment of liability made in writing before the expiration of the period of limitation, is enough to start a fresh period of limitation. Likewise, when a debt has become barred by limitation, there is also Section 25(3) of the Contract Act, by which, a written promise to pay, furnishes a fresh cause of action. In other words, what clause (3) of Section 25 of the Indian Contract Act in substance does is not to revive a dead right, for the right is never dead at any time, but to resuscitate the remedy to enforce payment by suit, and if the payment could be enforced by a suit, it means that it still has the character of legally enforceable debt as contemplated by the explanation below Section 138 of the Act. As far as this aspect of the case is concerned, the learned Division Bench observed that to determine as to whether or not a liability is legally enforceable, the provisions of the Contract Act cannot be said to be irrelevant. This can provide a cause for a legal liability. Although the primary question answered by the Division Bench was that a cheque becomes a promise to pay under Section 25(3) of the Contract Act, this view need not be followed by this Court in the light of

> the Judgment of this Court in the case of ***Ashwini Satish Bhat v. Shrijeevan Divakar Lolienkar*** (supra) and the other two Judgments referred to hereinabove. Nevertheless, the Division Bench Judgment is relevant to the extent that it holds that a promise to pay in writing as per Section 25(3) of the Indian Contract Act, 1872, matures into an enforceable contract, which can be enforced by filing a Civil Suit. If a suit could be filed pursuant to a promise made in writing and signed by the person to be charged therewith, as contemplated by clause (3) of Section 25 of the law of Contract, then, in my view, the debt becomes legally enforceable and if a cheque is given in payment of such debt is dishonoured and subsequently, the statutory notice is not complied with, then the person making the promise in writing and issuing the cheque, would still be liable to be punished under Section 138 of the Act."

3. In view of the above, the conclusion arrived at by the learned Magistrate could not be faulted. There is no merit in this appeal, consequently, the same is hereby dismissed.

N. A. BRITTO, J.

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